

(5) In cases where an individual cannot be required to appear as a witness, the Reviewing Officer may move the hearing to the location of the desired witness, accept a written statement, or accept a stipulation in lieu of testimony.

§ 250.202 Hearing procedures.

(a) Material in the case file which is pertinent to the issues shall be presented to the party who may respond to or rebut this material. The party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other items which bear on the issues or which may be relevant to the amount of the penalty to be assessed if the party is found to be guilty of the alleged violation. The Reviewing Officer may require the authentication of any written exhibit or statement.

(b) The party may request an opportunity to submit additional written testimony for consideration by the Reviewing Officer. The Reviewing Officer shall allow a reasonable time for submission of additional written testimony and shall specify the date by which it must be received.

(c) The Reviewing Officer may take notice of matters which are subject to a high degree of indisputability and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking notice of a matter, the Reviewing Officer shall give the party an opportunity to show why notice should not be taken. In any case in which such notice is taken, the Reviewing Officer shall place in the record a written statement on the matter of which notice was taken and the basis for taking such notice. The Reviewing Officer's statement shall indicate that the party consented to notice being taken or shall include a summary of the party's objections to notice being taken of a specific matter.

(d) In evaluating the evidence presented, the Reviewing Officer shall give due consideration to the reliability and relevance of each item of evidence but is not bound by strict rules of evidence.

(e)(1) A verbatim transcript of hearings before a Reviewing Officer need not be prepared. The Reviewing Officer shall prepare notes on the material and

points raised by the party in sufficient detail to permit a full and fair review and resolution of the case should it be appealed.

(2) A party may, at its own expense, cause a verbatim transcript to be made. If a verbatim transcript is made and the Reviewing Officer's decision is appealed, the party shall submit a copy of the verbatim transcript with the appeal to the Director and to the Reviewing Officer for inclusion in the case file.

§ 250.203 Reviewing Officer's decision.

(a) The Reviewing Officer's decision shall be in writing and shall include the Reviewing Officer's conclusions and the basis for the conclusions. Any decision shall be based upon substantial evidence in the record. The Reviewing Officer shall dismiss the case and remand it to the Regional Director if the Reviewing Officer finds that:

(1) There is not substantial evidence in the record establishing that the alleged violation occurred,

(2) For a violation under § 250.200(b)(1) of this part, either the required notice of the alleged violation was not provided or that the alleged violation did not continue after the termination of any period provided for the taking of corrective action, or

(3) For a violation under § 250.200(b)(2) of this part, there is not substantial evidence on the record that, at the time of the discovery of the violation or during a time prior to the discovery of the violation, the violation constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

(b) A dismissal under paragraph (a) of this section is without prejudice to the Regional Director's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(c) The Reviewing Officer's decision shall contain a statement advising the party of the right to an administrative appeal to the Director pursuant to 30 CFR part 290 of this title. The party shall be advised that failure to submit